

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NEW YUEN FAT GARMENTS FACTORY LIMITED, Case No.: 07 CIV 8304

Plaintiff,

-against-

AUGUST SILK, INC., and DIRECT APPAREL
SOURCING, INC.,

Defendants.

**RESPONSE TO DIRECT
APPAREL SOURCING, INC.'S
COUNTERCLAIMS AND
AFFIRMATIVE DEFENSES**

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Plaintiff NEW YUEN FAT GARMENTS LIMITED, by and through its
undersigned attorneys, as and for its Response to, defendant DIRECT APPAREL
SOURCING, INC.'s Counterclaims, alleges and pleads affirmative defenses to same as
follows:

**AS AND FOR PLAINTIFF'S RESPONSE TO DIRECT APPAREL
SOURCING, INC.'S STATEMENT OF FACTS**

1. Plaintiff denies knowledge and information sufficient upon which to form a belief as to the allegations contained in paragraph "151" of DIRECT APPAREL SOURCING, INC.'S ("Direct") Statement of Facts.
2. Plaintiff admits the allegations contained in paragraph "152" of Direct's Statement of Facts.
3. Plaintiff admits the allegations contained in paragraph "153" of Direct's Statement of Facts.
4. Plaintiff admits the allegations contained in paragraph "154" of Direct's Statement of Facts, except that plaintiff was also engaged as a shipper and distributor of Apparel at all relevant times in this proceeding.

5. Plaintiff denies the allegations contained in paragraph "155" of Direct's Statement of Facts, but admits that the plaintiff and direct and co-defendant did enter into several agreements, both written and unwritten, whereby the plaintiff would manufacture and ship apparel to co-defendant, August Silk, Inc. for payment.

6. Plaintiff admits the allegations contained in paragraph "156" of Direct's Statement of Facts, but denies that that plaintiff received substantial from Direct, and upon information and belief, the monies paid to the defendant were in the form of letters of credit and/or cash or check.

**AS AND FOR PLAINTIFF'S RESPONSE TO DIRECT APPAREL
SOURCING, INC.'S FIRST COUNTERCLAIM**

7. Plaintiff denies knowledge and information sufficient upon which to form a belief as to the allegations contained in paragraph "157" of DIRECT APPAREL SOURCING, INC.'S ("Direct") First Counterclaim.

8. Denies knowledge and information sufficient to form a basis as to the operation of the defendant's mind, and the allegations contained in paragraph "158" of Direct's First Counterclaim.

9. Denies the allegations contained in paragraph "159" of Direct's First Counterclaim, and refers questions of law to the Court for determination.

10. Plaintiff denies the allegations contained in paragraph "160" of Direct's First Counterclaim, but admits that plaintiff did receive payment from the defendants for other contracts that the parties had entered.

11. Plaintiff denies each and every allegations contained in paragraph "161" of Direct's First Counterclaim.

12. Plaintiff denies knowledge and information sufficient upon which to form a belief as to the allegations contained in paragraph "162" of Direct's First Counterclaim.

13. Denies the allegations contained in paragraph "163" of Direct's First Counterclaim.

14. Denies the allegations contained in paragraph "164" of Direct's First Counterclaim.

15. Denies the allegations contained in paragraph "165" of Direct's First Counterclaim.

16. Denies the allegations contained in paragraph "166" of Direct's First Counterclaim.

AS AND FOR PLAINTIFF'S RESPONSE TO DIRECT APPAREL SOURCING, INC.'S SECOND COUNTERCLAIM

17. Plaintiff repeats and realleges each and every prior allegation in paragraphs "1" through "10" hereof as if set forth at length herein, as is alleged in paragraph "167" of Direct's Counterclaim.

18. Denies the allegations contained in paragraph "168" of Direct's Second Counterclaim.

19. Denies the allegations contained in paragraph "169" of Direct's Second Counterclaim.

AS AND FOR PLAINTIFF'S FIRST AFFIRMATIVE DEFENSE TO AUGUST SILK INC.'S COUNTERCLAIMS

1. Defendant DIRECT APPAREL SOURCING, INC.'S ("August") counterclaims are barred by the doctrine of waiver.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE TO DIRECT'S COUNTERCLAIMS

2. Direct's counterclaims are barred by the doctrine of estoppel.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE TO DIRECT'S
COUNTERCLAIMS**

3. Direct's counterclaims are barred by the doctrine of laches.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE TO DIRECT'S
COUNTERCLAIMS**

4. Direct's counterclaims are barred by accord and satisfaction.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE TO DIRECT'S
COUNTERCLAIMS**

5. Direct's counterclaims are barred by the statute of frauds.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE TO DIRECT'S
COUNTERCLAIMS**

6. Direct's counterclaims fail to state a claim upon which relief can be granted.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE TO DIRECT'S
COUNTERCLAIMS**

7. Direct's counterclaims are barred by documentary evidence.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE TO DIRECT'S
COUNTERCLAIMS**

8. Direct's counterclaims are barred by statute of limitations.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE TO DIRECT'S
COUNTERCLAIMS**


9. Direct's counterclaims are barred by unclean hands.

WHEREFORE PLAINTIFF NEW YUEN FAT GARMENTS LIMITED,
respectfully requests that judgment be entered dismissing defendant DIRECT APPAREL

SOURCING, INC.'S counterclaims, and granting such further relief that this Court deems just and proper.

Dated: New York, New York
May 2, 2008

Yuen Roccanova Seltzer & Sverd LLP

By: 
Peter E. Sverd (6754)

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Garments Limited
132 Nassau Street, Suite 1300
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(212) 608-1178

To: Lazarus & Lazarus, P.C.
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New York, New York 10016
(212) 889-7400

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SOUTHERN DISTRICT OF NEW YORK

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NEW YUEN FAT GARMENTS FACTORY LIMITED,

Plaintiff,

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AUGUST SILK, INC., and DIRECT APPAREL
SOURCING, INC.,

Defendants.
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Case No.: 07 CIV 8304

**Affidavit of
Service**

STATE OF NEW YORK:


ss:

COUNTY OF NEW YORK:

I, Kit Ling Huang, being sworn, say:

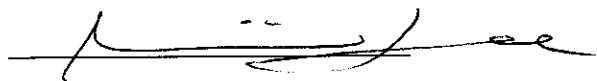
1. I am not a party to the action, am over 18 years of age and reside in Kings County, State of New York.
2. On May 2nd, 2008 I served the within Response to Direct Apparel Sourcing, Inc.'s Counterclaims and Affirmative Defenses by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to the following person(s):

- 1) Lazarus & Lazarus, P.C.
Attn: Harlan M. Lazarus
240 Madison Avenue, 8th Floor
New York, New York 10016



Kit Ling Huang

Duly sworn to before me
this 2nd day of May 2008.



WINNIE LEE
Notary Public, State of New York
No. 01LE6007469
Qualified in New York County
Certificate Filed in New York County
Commission Expires May 18, 2008

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SOUTHERN DISTRICT OF NEW YORK

NEW YUEN FAT GARMENTS FACTORY LIMITED,

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Plaintiff,

- against -

ECF CASE

AUGUST SILK, INC., and DIRECT APPAREL
SOURCING, INC.,

Defendants.

**RESPONSE TO DIRECT APPAREL SOURCING, INC.'S COUNTERCLAIMS AND
AFFIRMATIVE DEFENSES**

Attorneys for Plaintiff
YUEN ROCCANOVA SELTZER & SVERD LLP
132 Nassau Street, Suite 1300
New York, NY 10038
(212) 608-1178

To:

Service of a copy of the within
is hereby admitted.

Signature (Rule 130-1.1-a)

Dated: _____, _____


Peter C. Sverd, Esq.

PLEASE TAKE NOTICE:

☐ **NOTICE OF ENTRY**

that the within is a (certified) true copy of a
duly entered in the office of the clerk of the within named court on

20__

☐ **NOTICE OF SETTLEMENT**

that an order
will be presented for settlement to
within named Court, at
on 20__ at AM.

of which the within is a true copy
one of the judges of the

Dated:

Yours, etc.

YUEN ROCCANOVA SELTZER & SVERD LLP